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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191309
Party	Plaintiff David K. Aberizk
Correspondence Address	Barry F. Soalt Procopio Cory Hargreaves & Savitch LLP 525 B Street, Suite 2200 San Diego, CA 92101 UNITED STATES docketing@procopio.com, barry.soalt@procopio.com, glj@procopio.com
Submission	Withdrawal of Opposition
Filer's Name	Barry F. Soalt
Filer's e-mail	docketing@procopio.com, glj@procopio.com
Signature	/BFS/
Date	10/12/2010
Attachments	WITHDRAWAL OF OPP.pdf (11 pages)(1797802 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application No. 77/592,570

For: ICI ICI SERVICES and Design

DAVID K. ABERIZK,)	Opposition No. 91191309
)	
Opposer,)	WITHDRAWAL OF OPPOSITION
)	WITH PREJUDICE
v.)	
)	
ICI SERVICES, LLC,)	
)	
Applicant.)	
)	
)	

VIA ELECTRONIC SYSTEM FOR
TRADEMARK TRIALS AND APPEAL (ESTAS)

Opposer, David K. Aberizk, through his counsel, and subject to the approval of the Trademark Trial and Appeal Board, moves to dismiss Opposition No. 91191309 with prejudice.

The parties have entered into a separate Settlement Agreement with mutual consents dated September 29, 2010, a copy of which is attached as Exhibit "A" and made of record herewith, and based on the terms and conditions agreed upon between the parties therein, Opposer withdraws Opposition No. 91191309 with prejudice.

Accordingly, it is requested that the Opposition be dismissed with prejudice.

Respectfully Submitted,

PROCOPIO CORY HARGREAVES
& SAVITCH LLP

Dated: October 12, 2010

By: 

Barry F. Soalt

525 B Street, Suite 2200

San Diego, CA 92101

Telephone: (619) 525-3865

Facsimile: (619) 235-0398

Email: docketing@procopio.com

Attorneys for Opposer, DAVID K. ABERIZK

Our docket: 117006-2


CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing WITHDRAWAL OF OPPOSITION WITH PREJUDICE is being mailed on October 12, 2010, by first class U.S. mail to the attorney for Applicant as follows:

Thomas F. Bergert, Esq.
WILLIAMS MULLEN, P.C.
321 E. Main Street Suite 400
Charlottesville, VA 22902
Fax: 434.817.0977

Dated: October 12, 2010

By: _____


Alejandra Gutierrez Casey

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement"), effective as of the date the last party executes it (the "Effective Date"), is made by and between ICI Services Corporation, a corporation organized and existing under the laws of the State of Virginia with a principal place of business at 500 Viking Drive, Suite 400, Virginia Beach, Virginia 23452 ("ICI Services"), Integrated Consultants Incorporated, a corporation organized and existing under the laws of the State of California, with a principal place of business located at 548 I Avenue, Coronado, California 92118, and David K. Aberizk, President of Integrated Consultants Incorporated (individually or together with Integrated Consultants Incorporated, collectively, "ICI Integrated").

RECITALS

WHEREAS, ICI Services owns U.S. service mark application no. 77/592,570 (the '570 application) for the mark shown below:



in connection with the following services:

business organization and management consulting services; logistics management services in the field of supply chain management; transportation logistics, namely, arranging the transportation of goods for others; Industrial asset management services, namely, auctioning, liquidating, deploying, disposing and remarketing industrial assets of others; personnel relocation services; business services, namely, facilities management of technical operations; procurement, namely, purchasing hazardous materials and automotive spare parts for others; database management; information and data compiling and analyzing relating to business management; supply chain management services, in international class 35;

warehousing services; distribution services, namely, delivery of mail, technical periodicals, safety information, hazardous materials, automotive spare parts,

military spare parts and supplies; packaging articles for transportation; shipping of goods, in international class 39;

decontamination of hazardous materials, in international class 40; and

naval architectural design and marine engineering services; computer compatibility services, namely, data mapping; consulting services in the field of environmental assessment, compliance and planning; testing or research on prevention of pollution; engineering services for building and property condition assessment, facility management, repair and restoration, building instrumentation and monitoring, and environmental consulting; land use planning services; evaluation and testing of real estate for the presence of hazardous material; database development services; information technology consultation, in international class 42 (collectively, "the ICI Services Commercial Offerings");

WHEREAS, the U.S. Trademark Office ("USPTO") published the '570 application for opposition on or around July 21, 2009;

WHEREAS, ICI Integrated filed Opposition 91191309 on or around August 1, 2009, claiming a likelihood of confusion between the mark in the '570 application and ICI Integrated's mark ICI INTEGRATED CONSULTANTS INCORPORATED, which is registered as U.S. Registration No. 3,107,760 (the '760 registration) in connection with technical consultation in the field of electrical, mechanical, and nuclear engineering, in international class 42, and based upon ICI Integrated's alleged common law rights to ICI, ICI INTEGRATED, ICI INTEGRATED CONSULTANTS and INTEGRATED CONSULTANTS INCORPORATED in connection with the same or related services ("the ICI Integrated Commercial Offerings"); and

WHEREAS, the parties hereto perceive no likelihood of confusion as between ICI Services' use of: (1) the mark in the '570 application, (2) the mark ICI SERVICES and/or (3) the mark ICI SERVICES CORPORATION (together the "ICI Services Marks") in connection with

/// *Dennis M. McCarley* 9/29/10

///

David H. Aberizk
Digitally signed by David Aberizk
DN: c=US, o=U.S. Government, ou=ECA,
ou=VeriSign, Inc., ou=Integrated
Consultants, Inc., cn=David Aberizk
Date: 2010.10.01 14:34:46 -07'00'

the ICI Services Commercial Offerings and ICI Integrated's use of (1) the mark in the '760 registration, (2) the logo marks:



and/or the graphic element coupled with any of the other word marks, (3) the mark ICI INTEGRATED and/or (4) the mark ICI INTEGRATED CONSULTANTS (together the "ICI Integrated Marks"), all in connection with the ICI Integrated Commercial Offerings, and in order to settle Opposition No. 91191309 along with the underlying dispute, each party is willing to agree to abide by the conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the recitations, mutual promises and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. In light of distinctions between the ICI Services' Marks and the ICI Integrated Marks, and the differences in the ICI Services Commercial Offerings and the ICI Integrated Commercial Offerings, the parties agree and acknowledge that ICI Services' use of the ICI Services Marks in connection with the ICI Services Commercial Offerings and ICI Integrated's use of the ICI Integrated Marks in connection with the ICI Integrated Commercial Offerings are not likely to cause confusion, or to cause mistake or deceive the parties' respective customers. It is agreed that the respective customers should be classified as "sophisticated" customers who are apt to scrutinize the ICI Services Commercial Offerings and/or the ICI Integrated Commercial Offerings and are capable of distinguishing between these services and the respective marks, despite the common element of the marks, without assuming any connection therebetween.

2. ICI Services alleges use of its mark in the '570 application since at least June, 2006 and further alleges use of the blue, cursive, lower-case "ici" element in the '570 application since at least 1999. ICI Integrated alleges use of its mark in the '760 registration since at least June 1, 1999 and further alleges use of the ICI element in the '760 registration since at least June

1, 1999. After many years of contemporaneous concurrent use of the ICI Services marks by ICI Services and the ICI Integrated Marks by ICI Integrated, there are no known instances of actual confusion reported or known to the parties.

3. Except as noted below, ICI Services will only advertise, market and/or provide the ICI Services Commercial Offerings under the ICI Services Marks and will not advertise, market and/or provide ICI Services Commercial Offerings as simply ICI. Except as noted below, ICI Integrated will only advertise, market and/or provide the ICI Integrated Commercial Offerings under the ICI Integrated Marks and will not advertise, market and/or provide ICI Integrated Commercial Offerings as simply ICI.

4. ICI Services and ICI Integrated will each undertake good faith best efforts to revise all of its listings in government registries and the like to conform its trade identity to the form of "ICI Services" and "ICI INTEGRATED or ICI INTEGRATED CONSULTANTS", respectively, including without limitation, SeaPort, CCR (Central Contract Registries), and other government listings.

5. With regard to business promotional materials such as coffee mugs, shirts, golf balls, etc. ("Business Promotional Items"), ICI Integrated does not object to, and will not contest, ICI Services' use of the cursive, lower-case "ici" lettering alone on ICI Services' Business Promotional Items as long as such items are only made available to individuals working for ICI Services (e.g., employees, independent contractors) and are not made available to customers, clients, and/or other outside parties. Similarly, ICI Services does not object to, and will not contest, ICI Integrated's use of its own ICI abbreviation in ALL CAPS alone on ICI Integrated Business Promotional Items as long as such items are only made available to individuals working for ICI Integrated (e.g., employees, independent contractors) and are not made available to customers, clients, and/or other outside parties.

6. Neither party will file any type of trademark or service mark application to register the mark ICI by itself, whether in word mark form, stylized form or with a logo design element.

7. In the event any confusion might arise in the future from the parties' uses of their respective marks, the parties agree to cooperate with one another to eliminate or minimize such confusion.

8. ICI Services consents to and will not object to, oppose, petition to cancel or otherwise contest or challenge ICI Integrated's use or registration of the ICI Integrated Marks in connection with the ICI Integrated Commercial Offerings as long as such use or registration is not inconsistent with the terms of this Agreement. ICI Integrated consents to and will not object to, oppose, petition to cancel or otherwise contest or challenge ICI Services' use or registration of the ICI Services Marks in connection with the ICI Services Commercial Offerings as long as such use or registration is not inconsistent with the terms of this Agreement. To the extent a written consent is required from ICI Integrated in connection with a future application by ICI Services for any of the ICI Services Marks, or from ICI Services in connection with a future application by ICI Integrated for any of the ICI Integrated Marks, the respective other party will so provide.

9. Within five (5) business days after the Effective Date of this Agreement, ICI Integrated will voluntarily withdraw Cancellation No. 91191309 with prejudice.

10. Except for the obligations created by this Agreement, ICI Integrated, on behalf of itself, its officers, directors, shareholders, principals, agents, partners, predecessors, successors, assigns, related companies and subsidiaries, and any person or entity claiming on its or their behalf, releases, forever discharges, and covenants not to pursue, seek damages from, commence litigation against, or seek other legal or equitable remedies from or against ICI Services or its or their officers, directors, shareholders, principals, agents, partners, predecessors, successors, assigns, attorneys, and all related persons and entities, for and from any and all claims, demands, and causes of action that it or they may now have or that might subsequently accrue arising out of or in connection with, directly or indirectly, the disputes set forth herein.

11. Except for the obligations created by this Agreement, ICI Services, on behalf of itself, its or their officers, directors, shareholders, principals, agents, partners, predecessors, successors, assigns, related companies and subsidiaries, and any person or entity claiming on its or their behalf, releases, forever discharges, and covenants not to pursue, seek damages from,

commence litigation against, or seek other legal or equitable remedies from or against ICI Integrated or its officers, directors, shareholders, principals, agents, partners, predecessors, successors, assigns, attorneys, and all related persons and entities, for and from any and all claims, demands, and causes of action that it or they may now have or that might subsequently accrue arising out of or in connection with, directly or indirectly, the disputes set forth herein.

12. This agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original.

13. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may be modified only pursuant to a writing executed by authorized representatives of the parties.

14. The terms of this Agreement are binding upon the undersigned parties themselves along with all related or controlled companies, subsidiaries and affiliates, and their successors and assigns.

15. This Agreement and the covenants, promises and undertakings set forth herein apply throughout the world.

16. The restrictions on ICI Services in Sections 3 through 6 will continue in perpetuity unless terminated by legal abandonment of the ICI Integrated Marks, or the dissolution, termination of existence, liquidation, insolvency (other than a reorganization under Chapter 11 of the U.S. bankruptcy code) or business failure of ICI Integrated, or the appointment of a custodian or receiver for ICI Integrated if such appointment is not terminated or dismissed within sixty (60) days.

17. The restrictions on ICI Integrated in Sections 3 through 6 will continue in perpetuity unless terminated by legal abandonment of the ICI Services Marks, or the dissolution, termination of existence, liquidation, insolvency (other than a reorganization under Chapter 11 of the U.S. bankruptcy code) or business failure of ICI Services, or the appointment of a custodian

or receiver for ICI Services if such appointment is not terminated or dismissed within sixty (60) days.

18. This Agreement and all its provisions are intended to be severable. Should a term or provision hereof be unenforceable, the remaining terms and provisions shall continue to be binding.

19. A waiver of a breach or default hereunder shall not act as or be deemed a waiver of a subsequent breach or default of a like or similar nature.

20. Each person signing this Agreement on behalf of an organization warrants and represents that he or she has full and complete authority to enter into this Agreement on behalf of that organization, without exception.

21. All notices permitted or required under this Agreement shall be made to the following persons by First Class Mail, by Certified Mail, or by any recognized overnight carrier, and shall be deemed effective on the first date of receipt thereof:

If to ICI Services:

Mr. Dennis M. McCarley
ICI Services Corporation
President
500 Viking Drive, Suite 400
Virginia Beach, VA 23452

With a copy to:

Thomas F. Bergert, Esq.
Williams Mullen
A Professional Corporation
321 E. Main Street, Suite 400
Charlottesville, VA 22902

If to ICI Integrated:

David K. Aberizk
President
Integrated Consultants Incorporated
548 I Avenue
Coronado, CA 92118

With a copy to:
Barry F. Soalt, Esq.
Procopio Cory Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101

22. Excepting counterclaims, any cause of action relating to this Agreement that is brought by ICI Services shall only be brought in the local court of applicable jurisdiction in the State of California, and any cause of action relating to this Agreement that is brought by ICI Integrated shall only be brought in the local court of application jurisdiction in the State of Virginia. This Agreement shall be construed and governed by the laws of the state in which the action is commenced.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the date the last party executes it and have caused this Agreement to be executed by their duly authorized representatives and officers below.

ICI SERVICES CORPORATION

By: Dennis M. McCarley
Mr. Dennis M. McCarley

Title: President

Date: 9/29/10

INTEGRATED CONSULTANTS CORPORATION

By: David Aberizk
Mr. David K. Aberizk

Digitally signed by David Aberizk
DN: c=US, o=U.S. Government,
ou=ECA, ou=Verisign, Inc.,
ou=Integrated Consultants, Inc.,
cn=David Aberizk
Date: 2010.09.16 16:09:15 -0700

Title: Individually, and as President on behalf
of Integrated Consultants Incorporated

Date: September 1, 2010